

ing, near the entrance of the Senate Chamber.

Adopted.

On motion of Mr. Woodward,
The Senate adjourned until 10
o'clock to-morrow morning.

THIRD DAY.

SENATE CHAMBER,

AUSTIN, TEXAS, January 10, 1889.

Senate met pursuant to adjournment.

Lieutenant-Governor Wheeler in the chair.

Roll called.

Quorum present.

On motion of Senator Davis,
The reading of the Journal was dispensed with.

Senator Woodward offered the following resolution:

Resolved, That the Sergeant-at-Arms of the Senate be and he is hereby instructed to procure two hat and cloak racks for use in the Senate chamber.

Adopted.

The following message was received from the House:

Hon. T. B. Wheeler, President of the Senate:

We are instructed by the House to notify your honorable body that the House is organized and ready to proceed to business.

WHATLEY,
MCGAUGHEY,
ROBINSON of Bexar.

Senator Lane called up the following resolution introduced yesterday:

Resolved, That the President of the Senate be, and is hereby authorized and empowered, to appoint a regular standing committee, to be known as Committee on Mining, Geology and Irrigation, to which all bills relating to those subjects shall be referred.

The resolution was adopted.

Senator McDonald sent up the following special committee report:

COMMITTEE ROOM,

AUSTIN, January 10, 1889.

Hon. T. B. Wheeler, President of the Senate:

SIR—Your special committee on assignment of committee rooms beg leave to report that there are fifteen specially designated Senate committee

rooms in the Capitol, numbered from 1 to 15, inclusive, over the doors. We have assigned:

Judiciary Committee No. 1, to room No. 6.

Judiciary Committee No. 2, to room No. 7.

Committee on Education, to room No. 3.

Committee on Finance, to room No. 4.

Committee on Internal Improvements, to room No. 5.

Committee on Asylums, to room No. 1.

Committee on Penitentiaries, to room No. 2.

The above rooms to be occupied exclusively by the committees named.

The remaining eight rooms we have assigned as follows:

To Committee on Enrolled Bills and Committee on Engrossed Bills, No. 8.

To Committee on Constitutional Amendments, Committee on Public Lands, and State Affairs, No. 9.

To Committee on Contingent Expenses, No. 10.

To Committee on Roads and Bridges, No. 10.

To Committee on Mining, Geology and Irrigation, No. 10.

To Committee on Private Land Claims, No. 11.

To Committee on Public Health, No. 11.

To Committee on Military Affairs, No. 11.

To Committee on Commerce and Manufactures, No. 11.

To Committee on Claims and Accounts, No. 12.

To Committee on General Land Office, No. 12.

To Committee on Federal Relations, No. 12.

To Committee on Public Printing, No. 12.

To Committee on Public Debt, No. 13.

To Committee on Counties and County and Boundaries, No. 13.

To Committee on Frontier Protection, No. 13.

To Committee on Stock and Stock-raising, No. 13.

To Committee on Agricultural Affairs, No. 14.

To Committee on Retrenchment and Reform, No. 14.

To Committee on Treasurer's and Comptroller's Offices, No. 14.

To Committee on Privileges and Elections, No. 14.

To Committee on Public Buildings and Grounds, No. 15.

To Committee on Rules, No. 15.

To Committee on Insurance and Statistics, No. 15.

To Committee on Judicial Districts, No. 15.

Respectfully submitted.

H. D. McDONALD,
Chairman.

The report was adopted.

Senator Glasscock sent up the following:

Hon. T. B. Wheeler, President of the Senate:

DEAR SIR—I desire to be relieved as a member of, and from serving on the following committees, to which I have been appointed a member, viz.: Military Affairs, Penitentiaries, General Land Office, Privileges and Elections, Engrossed Bills, Public Lands, and Judiciary No. 2.

Respectfully yours,
G. W. GLASSCOCK.

The following message was received from the House:

HALL HOUSE OF REPRESENTATIVES,
AUSTIN, January 10, 1889.

Hon. T. B. Wheeler, President of the Senate:

SIR—In accordance with custom, I beg to inform the Senate that the House of Representatives of the Twenty-first Legislature has completed its organization by the election of the following officers, to-wit:

Hon. F. P. Alexander, of Hunt county, Speaker.

W. M. Imboden, of Madison county, Chief Clerk.

J. C. Carr, of El Paso county, Sergeant-at-Arms.

J. D. Montgomery, of Waller county, Assistant Sergeant-at-Arms.

W. C. Reynolds, of Harris county, Reading Clerk.

M. D. Burney, of Atascosa county, Journal Clerk.

Will Lambert, of Travis county, Assistant Journal Clerk.

A. A. Bell, of Callahan county, Calendar Clerk.

A. C. Buckner, of Rusk county, Engrossing Clerk.

T. L. Black, of Fayette county, Enrolling Clerk.

John T. Dickson, of Smith county, Doorkeeper.

L. T. Prater, of Bell county, Assistant Doorkeeper.

Rev. H. W. Dodge, of Kaufman county, Chaplain.

Early D. Scott, of Kerr county, Postmaster.

Respectfully,
W. M. IMBODEN,
Chief Clerk House of Representatives.

On motion of Senator McDonald, Senator Burges was excused indefinitely from the first day.

On motion of Senator Frank, Senator Simkins was excused indefinitely from the first day.

The President announced that in accordance with the request made by Senator Glasscock he had relieved him from the following committees, viz.: Military Affairs, Penitentiaries, General Land Office, Privilege and Election, Engrossed Bills, Public Lands, and Judiciary No. 2.

The President appointed Senator Harrison chairman of the Committee on the General Land Office, and Senator Seale a member of the Committee on Engrossed Bills.

[Senator McDonald in the chair.]

Senator Townsend offered the following resolution:

Resolved, That each member of the Senate be permitted to subscribe for any number of newspapers published in this State, not exceeding twenty, to be paid for out of the contingent expense fund, at the rate of four cents per copy.

[The President in the chair.]

Senator Frank offered the following substitute:

Resolved, That four hundred and fifty copies of the Senate Journal (in the form adopted by the Senate of the Twentieth Legislature) be ordered printed each day for the use of the Senate; and

Resolved 2, That it shall be the duty of the Sergeant-at-Arms to equally distribute the printed Journals on Senators' desks each morning before the Senate convenes.

Resolved 3, That the Journals so furnished the Senate shall be in lieu of the papers provided for in the original resolution.

Senator Claiborne moved to amend the substitute by inserting 1000 in lieu of 450.

On motion of Senator Upshaw,

The amendment was lost by the following vote:

YEAS—25.

Abercrombie,	Harrison,
Allen,	Ingram,
Armistead,	Jarvis,
Atlee,	Johnson,
Burney,	Kimbrough,
Cranford,	Lane,
Davis,	Maetze,
Douglass,	McDonald,
Field,	Pope,
Frank,	Seale,

Sims,
Townsend,
Tyler,

Upshaw,
Woodward.

NAYS—4.

Claiborne,
Glasscock,

Morris,
Stephens.

Senator McDonald moved to amend the resolution by striking out the word "four" before cents, and inserting "three."

Adopted.

Senator Burney moved to amend by striking out 450 and inserting 600.

Accepted.

Senator McDonald moved to table the substitute.

Lost by the following vote:

YEAS—10.

Armistead,
Claiborne,
Harrison,
Lane,
Maetze,

McDonald,
Pope,
Townsend,
Upshaw,
Woodward.

NAYS—19.

Abercrombie,
Allen,
Atlee,
Burney,
Cranford,
Davis,
Douglass,
Field,
Frank,
Glasscock,

Ingram,
Jarvis,
Johnson,
Kimbrough,
Morris,
Seale,
Sims,
Stephens,
Tyler.

Senator Townsend moved to

Amend by inserting "two Senate Journals" instead of "six hundred."

On motion of Senator Frank,

The amendment was laid on the table.

The substitute was adopted by the following vote:

YEAS—20.

Abercrombie,
Allen,
Atlee,
Burney,
Claiborne,
Cranford,
Davis,
Douglass,
Field,
Frank,

Glasscock,
Ingram,
Jarvis,
Johnson,
Kimbrough,
Morris,
Seale,
Sims,
Stephens,
Tyler.

NAYS—9.

Armistead,
Harrison,
Lane,
Maetze,
McDonald,

Pope,
Townsend,
Upshaw,
Woodward.

Senator Tyler moved to strike out the third section of the substitute.

Lost, by the following vote.

YEAS—10.

Armistead,
Harrison,
Lane,
Maetze,
McDonald,

Pope,
Townsend,
Tyler,
Upshaw,
Woodward.

NAYS—19.

Abercrombie,
Allen,
Atlee,
Burney,
Claiborne,
Cranford,
Davis,
Douglass,
Field,
Frank,

Glasscock,
Ingram,
Jarvis,
Johnson,
Kimbrough,
Morris,
Seale,
Sims,
Stephens.

Senator Pope moved to amend so as to leave it discretionary with a Senator to take the journals, and whatever number may be refused shall be deducted from the whole number provided for.

Accepted.

Senator Townsend offered the following amendment:

Amend by making the resolution read "that each member may take newspapers to the extent of the cost of the Journals provided for, to be estimated by the Sergeant-at-Arms, provided he does not take more than two Journals.

Lost by the following vote:

YEAS—9.

Armistead,
Harrison,
Lane,
Maetze,
McDonald,

Townsend,
Tyler,
Upshaw,
Woodward.

NAYS—20.

Abercrombie,
Allen,
Atlee,
Burney,
Claiborne,
Cranford,
Davis,
Douglass,
Field,
Frank,

Glasscock,
Ingram,
Jarvis,
Johnson,
Kimbrough,
Morris,
Pope,
Seale,
Sims,
Stephens.

Senator Claiborne moved to adjourn till 10 o'clock to-morrow morning.

Lost.

The substitute, as amended, was adopted.

BILLS AND RESOLUTIONS.

By Senator McDonald:

A bill to be entitled "An act to create the office of State Reporter, and to provide for printing and publishing the reports of the Supreme Court and of the Court of Appeals of the State of Texas."

Referred to Judiciary Committee No. 1.

A bill to be entitled "An act to provide for the revising, digesting and publishing the laws, civil and criminal, of the State of Texas."

Referred to Judiciary Committee No. 1.

By Senator Morris:

A bill to be entitled "An act to amend an act to amend article 318, chapter 4, title 9, of the Penal Code of the State of Texas, passed by the Twentieth Legislature, and approved February 24, 1887."

Referred to Judiciary Committee No. 2.

[The bill seeks to limit the penalty for carrying concealed weapons, by a fine of not more than two hundred dollars.]

A bill to be entitled "An act to amend article 606, chapter 15, title 15, of the Penal Code of the State of Texas."

[The bill seeks to define murder of the first and second degrees.]

Referred to Judiciary Committee No. 2.

By Senator Johnson:

A bill to be entitled "An act to correct abuses and prevent unjust discriminations and extortions in the rates of freight and passenger traffic on the different railroads of this State; to prevent pooling; to establish reasonable maximum rates of charges for the transportation of passengers and freight on said railroads; to prohibit railroad companies, corporations and lessees in this State from charging other than just and reasonable rates, and to provide adequate penalties for the enforcement of the same; and to prescribe a mode of procedure and rules of evidence in relation thereto; and also to create a Board of Railway Commissioners, and to prescribe their powers and duties in relation to the same."

Referred to Committee on Internal Improvements.

By Senator Burney:

A bill to be entitled "An act to amend article 191, chapter 2, title 9,

of the Revised Civil Statutes of the State of Texas."

[This act makes it unlawful for the garnishee to pay or deliver any effects to the defendant. A sale made by an incorporated or joint stock company shall be void as affects the debt of the plaintiff.]

Referred to Judiciary Committee No. 1.

A bill to be entitled "An act to validate and quiet the title to land sold by the State Land Board under an act approved April the 12th, 1883."

Referred to Committee on Public Lands.

By Senator Kimbrough:

A bill to be entitled "An act to amend section 14 of an act to amend articles 8 and 14 of an act to re-district the State into judicial districts and fix the times for holding courts therein, and to provide for the election of judges and district attorneys in said districts at the next general election to be held on the first Tuesday after the first Monday in November, 1884, approved April 9, 1883; to create the Fortieth judicial district of the State of Texas, fix the time for holding court therein, and provide for the appointment of a district judge for said district, approved March 27, 1885; to create the Forty-fourth judicial district of the State of Texas, fix the times for holding court therein, and to provide for the appointment of a district judge for said district."

Referred to committee on Judicial Districts.

By Senator Glascock:

A bill to be entitled "An act fixing a lien for owners of pastures or those in charge of pastures on such stock as are placed on their pastures by the respective owners or persons in charge of such stock, to secure the payment of pasture fees or charges."

Referred to Judiciary No. 1.

A bill to be entitled "An act to amend section 1, chapter 90 of the Revised Civil Statutes," approved April 18, 1879.

[The bill defines a lawful fence in local districts.]

Referred to Judiciary No. 1.

A bill to be entitled "An act to amend article 1192 of the Revised Civil Statutes."

[This bill seeks to change article 1192 so that parties to a suit may amend pleadings, or parties intervene during vacation.]

Referred to Judiciary Committee No. 1

By Senator Cranford:

A bill to be entitled "An act to amend article 320, chapter 4, title 9, of the Penal Code, State of Texas, relating to the carrying of arms in church and other assemblies, and to increase the punishment for this offense."

[The object of this bill is to increase the penalty for unlawfully carrying arms.]

Referred to Judiciary Committee No. 2.

By Senator Jarvis:

A bill to be entitled, "An act to amend chapter 4, title XCX, of the Revised Civil Statutes of the State of Texas by adding thereto Article 4761a.

[This bill requires tax collectors to remit all money collected for the State to the State Treasurer, and not disburse any in the counties in which such money is collected.]

Referred to Judiciary Committee No. 1.

A bill to be entitled "An act making an appropriation for the mileage and per diem pay of the members and the per diem pay of the officers and employees of the Twenty-first Legislature."

Referred to Finance Committee.

A bill to be entitled "An act making appropriations for deficiencies in the appropriations heretofore made for payment of expenses in support of the State government from March 1, A. D. 1887, to February 28, 1889, being for payment of claims registered in the Comptroller's office in accordance with law and for outstanding claims not registered, and other deficiencies."

Referred to Finance Committee.

A bill to be entitled "An act making an appropriation to defray the contingent expenses of the Twenty-first Legislature."

Referred to Finance Committee.

By Senator Pope:

A bill to be entitled "An act to require railroads companies in this State to provide separate coaches for passengers of different colors."

Referred to Committee on Internal Improvements.

A bill to be entitled "An act to provide for a board of equalization for cities incorporated under the general laws of the State of Texas."

Referred to Committee on State Affairs.

By Senator Lane:

A bill to be entitled "An act to amend section 26 of an act entitled an act to establish and maintain a system

of public free schools for the State of Texas."

[This act requires the State Treasurer to hold the available school fund subject to disbursement of the Comptroller upon the presentation of the warrant of the treasurer of the county, city or town entitled to the money credited to its respective districts.]

Referred to Committee on Education.

A bill to be entitled "An act to provide for the better assessment of personal or moveable property in the State of Texas liable or subject to taxation under the laws of the State."

Referred to Judiciary Committee No. 1.

By Senator Woodward:

An act to amend "An act entitled an act to amend chapter 2, title 96, of the Revised Civil Statutes by adding thereto article 4676a, providing for the assessment of livestock in pastures."

Referred to Judiciary Committee No. 1.

By Senator Stephens:

A bill to be entitled "An act to extend the time within which lands that have been sold for taxes and bought in by the State, may be redeemed."

Referred to Committee on Public Land.

"An act to repeal chapter 8 and articles Nos. 3924 to 3936, inclusive."

[This bill seeks to repeal the pre-emption law.]

Referred to Judiciary Committee No. 1.

A bill to be entitled "An act to authorize counties to fund their indebtedness and to provide for the payment of the same."

Referred to Finance Committee.

By Senator Tyler:

A bill to be entitled "An act to establish the Peabody Normal College of Texas, to provide for its location and to make an appropriation for the support of the same for the two years ending in June, 1890 and 1891."

Referred to Committee on Education.

A bill to be entitled "An act making an appropriation for the support of the House of Correction and Reformatory at Gatesville for the months of January, February and March, 1889."

Referred to Committee on Finance.

By Senator Kimbrough:

A bill to be entitled "An act to regulate attachments in certain cases, and to provide for the distribution of the

proceeds of property sold under judgment in such cases."

Referred to Judiciary Committee No. 1.

By Senator Abercrombie:

A bill to be entitled "An act to amend an act approved March 29, 1882, entitled 'An act to amend an act to re-district the State into judicial districts, and to provide for the election of judges and district attorneys of said districts at the next general election to be held on the first Tuesday after the first Monday in November, 1884,' approved April 9, 1883."

[To amend act of March 29, 1887, fixing times of holding court in Twelfth judicial district. This act changes time of convening court in Trinity, the beginning county of the district, from first Monday in February and August to first Monday in March and September, and makes the terms three weeks in that county, and in the counties of Walker, Madison and Leon in the order named, and close the circuit in Grimes with time till business is disposed of, the circuit heretofore closing in Leon.]

Referred to Committee on Judicial Districts.

The following message was received from the Governor:

Gentlemen of the Senate and House of Representatives:

In all good governments both public and private rights must be defined and limited by law, and at the commencement of your legislative business in the interests of a people presenting all the physical evidences that go to make up a peaceful, industrious population, with a strikingly pronounced determination on the part of all classes and conditions to preserve social order, protect person and property, enforce the laws, and render obedience to all legally constituted authorities, the Constitution makes it my duty as the executive to communicate by message to the Legislature information concerning the condition of the State, and recommend such measures as may be deemed expedient.

In compliance with this duty, I respectfully suggest that questions of a financial character and bearing, involving the mode and manner of providing revenue to defray the expenses of the State government, and the purposes and objects to which it should be applied, furnish subjects worthy of your highest ability, and are properly entitled to your first consideration.

The Constitution provides that no

money shall be drawn from the treasury but in consequence of appropriations made by law, and the Legislature is invested with entire control over the public purse.

By the exercise of this power you are required to define and limit the other departments of the government to the sums expressly provided for their purposes for the time fixed, and while these departments should not be permitted to create a necessity for expenditures in excess of appropriations, nor to engage in a reckless extravagance of public funds, on the other hand, as this important power is delegated to you, and its exercise cannot be avoided, you should not vote expenditures, or impose burdens, and then fail or refuse to provide ways and means to meet the obligations as they mature. This would not only be unjust, but it is unwise, because extravagant appropriations will always follow when those who authorize the expenditures feel no responsibility in providing the means of payment, and then too, those who hold the obligations of the government for services rendered must suffer loss in waiting until their just demands can be met by deficiency appropriations.

As this is one of the most serious questions awaiting the careful attention of your honorable bodies, I submit herewith the report of the honorable Comptroller, which not only exhibits a trained and systematic knowledge of his department, but furnishes elaborate tables and figures and presents ample information on which your safe and judicious action may be based in providing for present or future exigencies of the public service. From its tabular statement you will observe, that estimated receipts from the ten cent levy and all other sources, with the existing cash balance in the Treasury, when applied to the current operating expenses estimated upon the basis called for by the different departments, and when further depleted by the unexpended appropriations made by the special session of the Twentieth Legislature, will leave only \$69,480.68 as a cash surplus in the treasury on August 31, 1889. And this does not include the amount you may deem necessary for the current expenses of the Reformatory, nor does it anticipate an appropriation for the A. and M. College or the normal schools.

Assuming the same estimates as a basis of calculation, it is further shown that the 20 cent tax levy will leave a deficiency of \$172,495.74 on August 31,

1890. It is well to remember also, that these estimates are based upon the idea that the same close collections will be maintained by collectors during the ensuing fiscal years, and in addition, we can no longer expect to derive benefit from the usual collection of back taxes, which on August 31st, 1887, amounted to \$362,836.10 for 1885 and prior years, and which to that extent swelled receipts beyond what was considered in basing estimates of current expenses.

Apprehending that the legislation of the special session of the 20th Legislature whereby the ordinary expenses were so greatly increased by the creation and establishment of a Reformatory, Deaf and Dumb and Blind Institute for the colored youth, a new court and an Orphan Asylum, and the requisite sum for the proper care and keeping of the Capitol building, together with the other liberal drafts upon the surplus in the Treasury, would result in putting our State Government in a straight jacket and start it upon an impracticable course, from which the wise enactments on revenue and taxation passed by the regular session had contributed so much to redeem it. I did not consider the reduction made in the tax levy consistent with sound public policy, and endeavored to engraft my conclusions upon the appropriation bills, and prevail upon the Legislature to adopt what I deemed a safer policy, suggesting as a precaution against the danger of a reduction of receipts below the requisite margin absolutely necessary to enable the Treasury at all times to meet the just demands upon it, that they leave the rate of taxation as it then was, and by enactment remit such portion of the surplus as they deemed just and wise to the whole people who were first entitled to consideration in a disposal of this money. And by leaving this money in the Treasury to the credit of the revenue account, would simply anticipate the collections of the year to that extent; save the State from the cost of its collection, unless it was thought advisable to extend relief to that extent to the collectors, and thus no risk would be taken of impairing the ability of the State to operate upon a cash paying basis; and when your honorable bodies assembled, if it should be found that there was still a surplus by reason of the tax rate being too high, you could remit the overplus to the people, and then more advisedly adjust the levy to suit the requirements of the case, and the only loss to be sustained by the

taxpayers would result from the loss of the interest on the excess, if any, not required for the current expenses of the government, which was too small to each citizen to be deemed objectionable. In support of the advisability of this suggestion attention was called to the fact that certain bonds, hereafter to be called to your attention, would fall due, and no sinking fund had been created to meet them. If, therefore, the existing tax rate was not disturbed, we might safely calculate upon the excess of receipts over disbursements to supply the government with the necessary funds to meet its obligations to these private creditors; and this would leave the remaining surplus, less the amount remitted to the taxpayers, to be disposed of in payment of existing deficiencies and for such other meritorious purposes as were commended to their judgment.

And now, in view of the fact that when you shall have provided for the current expenses of the Reformatory, if the estimates of the Comptroller are adopted as a basis for such appropriations as you may make to run the government, the expenditures and receipts will be about evenly balanced on August 31, 1889. And when you consider that, as the receipts derived from taxation are not uniform during the year, the great bulk of it reaching the Treasury in December and January, and for more than half the year the expenditures exceed the receipts, making it imperative to keep a sufficient surplus; or reserve, as a margin to tide the government over these months to prevent a temporary embarrassment and to enable the Treasury to meet all lawful demands at maturity, requiring for this purpose, in the opinion of the Comptroller, at least \$300,000 to constitute a safe margin, you can readily appreciate that it creates an exigency beset with difficulties, but no less demands your serious attention.

And the inquiry which naturally suggests itself is, how are we now to avert the impending deficiency during the coming fiscal years? Should you now deem it advisable to restore the former tax rate of 25 cents this might afford relief for the year 1890, but as the government for 1889 has to be supported from the taxes levied and collected in 1888 and now on hand, it is too late to seek relief for this year from that source, and as it is quite certain that it will require all the revenue accruing from a 25 cent levy to supply a sufficient sum to support the government for 1890 with the increase in expenses heretofore mentioned, it would be

inexpedient and unwise to burden that year with a deficiency inherited from 1889.

In the first place, then, I respectfully submit, that it will be necessary for you to scrutinize the expenditures with great care, and while economy does not suggest, or require, that you should withhold the means necessary to accomplish important objects, it is my deliberate opinion that many of the appropriations asked for, and the estimates presented for ordinary current expenses, upon which the Comptroller bases his report, are in excess of what they should be in the face of our present financial condition.

It will be seen by comparison with the appropriations made at the special session of the Twentieth Legislature, that while some of the departments and institutions ask for less, the aggregate demand is \$371,504.00 in excess of previous appropriations.

A proper analysis, however, will disclose the fact that a part of this sum is absolutely necessary to provide for the additional charitable and reformatory institutions and the Commission of Appeals Court, not formerly embraced in the appropriation bill.

In this connection it is worthy of remark that while the executive branch of the government, and many, if not all, of the penal and charitable institutions seem from present information to have been kept strictly confined in their expenditures within the limit of the appropriations provided, and many have covered back into the treasury unexpended balances from last year, the judicial department has transcended its appropriations, and the deficiency to be provided for in payment of the fees of sheriffs, clerks, attorneys, special judges, attached witnesses, and justices and constables in examining courts amounts to \$337,600. From this enormous increase in the cost of enforcing our criminal laws under the existing statutes, you may likely discover an explanation of the probable stringency in our public finances, and it may direct your efforts towards a reasonable retrenchment in this department of government as well as the others?

The amount of fees in felony cases paid district attorneys, sheriffs and clerks in district courts for the year 1881 was \$178,796.95, and increased in 1882 to \$404,606.98, then diminished in 1883 to \$230,862.83. But from that period the increased ratio has been uniformly rapid until it has reached the enormous

sum in 1888 of \$509,155.55. It is needless to suggest, that any effort at retrenchment and reform in this direction by merely restricting the amount of appropriations, without a change in the law under which ex-

travagance, if any, originates, would be futile and delusive, for the claims would still come up in ever recurring deficiencies and have to be recognized and honored.

Your special attention should be given to the following bonds to which the Comptroller alludes in his report under the caption of

BONDED DEBT OF THE STATE.

Referring to table No. 48, the bonded indebtedness of the State is shown to be \$4,237,730.00. Table No. 49 gives the amount and character of these bonds held by the School, University, Agricultural and Mechanical College, and Asylum funds, and the amounts owned by individuals, aggregating \$3,017,100.00 held by special funds, and \$1,220,630.00 held by individuals.

The called session of the Twentieth Legislature, under act of May 9th, 1888, created a sinking fund of \$250,000 to pay off such of the State bonds as fall due in 1890 and 1891, as are held by individuals. The issue of \$200,000 revenue 6 per cent deficiency bonds under act of February 13th, 1885, which fall due on the first of January, 1890, are all held in trust by the State for the School, University, and Asylum funds. No other State bonds mature until 1892. Of the issue of May the 2d, 1871, 6 per cent funding bonds, \$65,200, are outstanding and fall due on the 1st of March, 1892, \$41,700 of which are owned by individuals. Under act of December 2, 1871, \$500,000 revenue 7 per cent deficiency bonds were issued and sold; \$467,000 of this issue are outstanding and fall due April 1st, 1892; \$207,000 are in the hands of individuals, the balance, \$260,000, being held by the special funds, making a total of State bonds held by individuals which fall due in 1892, \$248,700.

I therefore call the attention of your Excellency to the necessity of an amendment to the act above referred to, so as to make the sinking fund available at the maturity of such bonds as the Legislature may in its wisdom deem expedient to provide for. There are outstanding \$499,000 7 per cent frontier defense bonds, issued under act of August 5th, 1870, and run 40 years, but are redeemable at the pleasure of the State on September 1st, 1890. It would seem

to be a wise policy to make provision for the calling in of these bonds by authorizing an issue bearing a smaller rate of interest—say 5 per cent; this would be a saving to the State of \$9980 a year, a total of \$199,600 at the maturity of the 7 per cent bonds.

THE JUDICIARY.

You attention has just been directed to the vast increase in the expenditures in this branch of the government from fees to officials, and the cost of conveying attached witnesses. And while these officers, by their fearless and zealous labors are doing a great work for the preservation and protection of life, liberty, and property in our State, for which they are justly entitled to fair and reasonable compensation, and we are not blind to the fact, that many objections can be stated to the injustice and hardship attending the enforced presence of witnesses which are entitled to more or less weight, and it is confessedly difficult to enact a law on the subject to which there cannot be rightfully made some ground of practical objection, yet, I respectfully suggest that unless the evidence supplied by the Comptroller's department respecting many of these claims be discredited, it will become obvious beyond doubt, that the present law has given birth to serious abuses, by which the State is made to suffer great loss without corresponding benefit to the general public, and it is hoped that you may take such action as in your judgment will contribute to the best interests of the State, and devise a speedy remedy for evils which are acknowledged to exist. Whether there is a complete legislative remedy for it or not, certainly some additional safeguards can be thrown around the Treasury to secure it more effectually from imposition from this source. Much of the attendant evil, however, when traced to the fountain head, will be found inherent in the judicial system.

In my message to the Twentieth Legislature at its regular session, under the head of Constitutional Amendments, this subject was discussed at considerable length, advertising to the phase of the subject bringing upon the State much of this immense expenditures I said: "It is apparent to every observing man that under the existing system, the cost of unlimited continuances, and consequent repetition of officers' fees and contingent jail expenses; the manifest abuse of the law designed to allow

reasonable pay to sheriffs and attached witnesses, when forced to leave the county of their residence, coupled with a lack of proper and certain punishment of those convicted of misdemeanors, by forcing them to pay or go to work, is heaping a burden upon the State and counties for the administration of the criminal laws simply enormous, yet all to be paid by the people, and suggestive of the fact that real retrenchment and reform must necessarily begin at the bottom as well as at the top of our present system."

In this connection it may not be deemed inappropriate to call the attention of the people to the fact that they cannot be held entirely blameless, but in reality are primarily chargeable with the inception and existence of very much of this unnecessary expense in the enforcement of the criminal laws. To substantiate this we have only to refer to the exhaustive report of the Attorney General, showing the percentage of indictments and acquittals, and the great number of nol pros. cases, from which we conclude that grand juries are too prone to indict men for every conceivable offense, upon testimony that will not bear public scrutiny in the courts, and suggests the inquiry whether they are not too frequently hunting for victims, or influenced by prosecuting officers who are to be benefitted by accruing costs, rather than properly trying to rid society of offenders no longer endurable. Time was when all human shortcomings from prescribed standards were regarded as criminal, and punishment was meted out without regard to age or circumstance, but intelligent investigation showed resultant evils too serious for silence or longer neglect, and proper reform began. The cost to the taxpayers from this source is by no means the only feature of the case worthy of attention. A man may be accused by the malice of his fellows, or by circumstances, and though presumably innocent, under the hasty and necessarily imperfect investigation instituted by the grand jury hearing but one side of the case, he is taken from his family and friends, all his relationship to society disturbed or destroyed, and if unable to make sufficient bond, is thrown into jail, where the hardened criminal awaiting trial or transportation to the penitentiary, the accused and the suspected, with now and then a raving lunatic, are crowded into promiscuous company

with an imposed idleness, in a moral atmosphere made shocking beyond description, which is promotive rather than repressive of crime, and from which the most abandoned frequently emerge in a worse condition than when they entered. If, under our laws, the State or a corporation cannot take a man's property for public necessity, save by legal process most carefully guarded, and for which ultimate and ample compensation must be made, by what method of reasoning can they be justified in wantonly depriving a man of his liberty, which is more precious, and after subjecting him to serious loss and the contamination mentioned, and failing to make out a case against him, turn him adrift without amends? I would not be understood as assailing the wisdom of the grand jury system, but after investigating the one thousand applications for pardons presented, many of which are signed by the court officials, juries and prominent citizens, upon the alleged ground that they believed the convict, while technically guilty, was in reality not a criminal in purpose or by previous conduct, and when the grand juries are shown to constitute the "not bed" so prolific in the production of a harvest of costs to be paid by the people in the end, I feel that I would be recreant to my duty and State did I not invoke them to greater care and prudence.

The practice obtaining in the system whereby several indictments are permissible for what should really constitute but one offense, not only swells the volume of costs but begets a manifest inequality of punishment and lack of even handed justice so essential to reformation, which is the prime object of all punishment. One instance of very many coming under my observation will suffice to fix the attention of your honorable bodies upon this point. A youth 17 years old was indicted and convicted for forging nine small orders on his employer, and in nine cases for uttering or passing them, but did not in the nine orders reach the sum which his employer justly and confessedly owed him for services rendered. Yet, he was given thirty-six years in the penitentiary and was conveyed to the walls chained to two hardened criminals, one of whom was convicted of horse stealing and sentenced for five years, and the other for manslaughter and sentenced for two years. We may well conceive that the conscious, unjust and disproportionate punishment would owe a serious bar to this boy's reform-

ation, and it is to be hoped for the credit of humanity and the good name of our State that this prosecution was not prompted by a desire for the fees accruing. But, at any rate, if the State demands equity, justice and right-doing as conditions of citizenship, it should be scrupulously exact in meting out equity and justice to its citizens. If these things do not foreshadow the demoralization of our judicial system they certainly indicate the speedy bankruptcy of the State and county treasuries.

When I assumed the duties of the executive office there were 2,859 convicts in the penitentiary, and on December, 1888, there were 3,302, showing an increase of 443 in spite of deaths, discharges, pardons and escapes. With a corresponding ratio we may safely conclude that by 1890 there will be nearly or quite 4,000. With the present prison accommodations less than 2,000 can properly be confined within the walls, and nothing like that number can be utilized at remunerative prison work. In view of this it appears to me that a more careful revision of our penal code, looking to a reduction of a large percentage of felonies to misdemeanors, might possibly be a step in the right direction. And as it is conceded that the intent and not the value of the property stolen should be the basis of punishment, the intent constituting the gist of the offense; and since the spirit of justice is so frequently outraged by the discrimination of punishment for crimes nominally different but in reality the same, it seems to me that greater discretion should be left the jury, where mitigating circumstances were found to exist and the accused technically guilty, to graduate the punishment in due proportion to the turpitude of the offense, instead, as now, having to join the district attorney and presiding judge in an appeal for executive clemency, as the only remaining remedy for a wrong they were powerless to avert.

It is with all due deference that I venture to make these suggestions to your honorable bodies, composed of so much legal acumen, and with a full sense of the reluctance on the part of our people to adopt innovations upon time honored statutes. But prescription should not always render its testimony as conclusive against truth, else the oldest errors would be sanctified by time and rendered perpetual by persistence. There is some complaint in the State about the manifest inequality of the work imposed upon

the district judges. It is claimed, with seeming truth, that while some of them are compelled to labor hard the entire year, others are not employed one-half their time, and all of them receive the same salary. This would appear unjust, and if it be deemed advisable by the Legislature to make a more equal distribution of the work it would remove a present ground of complaint on the part of those who suffer from the discrimination.

PUBLIC LANDS.

I am not prepared to say that the law enacted by the 20th Legislature is the best law that could be devised, or that it is entirely faultless, but I believe that the State under the present public land policy will be able to so dispose of its great landed interest belonging to the public schools as to secure from them a revenue, instead of their remaining non-productive and thereby oppressing the people with increased taxes when the means are at hand for relieving them in a great part, and at the same time not retard settlement, or prevent the hardy, industrious pioneer from occupying these waste places as a settler in good faith.

And without claiming that the judgment of the officials who have attempted to carry out the provisions of this law has been always unerring, it is an encouraging circumstance that its enforcement has created but little friction, and for the results, we invite your attention to the report of the Commissioner of the General Land Office, which leaves but little to record here, and this report, in connection with that of the Treasurer, will exhibit the improvements made and revenue derived. It will be seen that the receipts from sales and leases amount to \$680,000, and the estimated receipts from interest on land sales alone for the year 1889 amounts to \$710,000, and from leases \$169,000, making a total of \$879,000. This embraces what are deemed valid claims, which when collected constitute available school fund. It will be understood, however, that this is to some extent conjectural, since all losses that may ensue from forfeitures, corrections in surveys and conflicts must be deducted.

The leases in perfect standing amount to \$169,162.72. To this may be added \$14,840 for leases in Greer county and \$26,017.36 suits on delinquent leases, making a total of \$210,020.08. In all

probability the two latter items will fall short of estimated results. It will be seen that the interest past due the school fund and accruing under the several acts prior to 1887 is estimated at \$500,000.

It has been found that while the act of July 8, 1879, provided in section 12 a method whereby such lands should become forfeited on failure of the purchaser to fulfill his contracts, yet the method was limited to lands lying in organized counties, and was in itself so inefficient, in that it depended upon the services of a number of officials and provided no means of payment for services rendered, that it is believed not to have been put in force. Under this act lands were sold on ten years' time, with interest at the rate of 10 per cent per annum. The act approved April 6, 1881, merely extended the operation of the law of 1879 to unorganized counties, and provided for sales on twenty years' time at 8 per cent, but as section 12 of the former law was not amended or further provision made for a penalty on non-compliance the condition of affairs was not materially improved. On May 2, 1882, section 8 of the above acts was amended in so far as the payment of interest was concerned in the latter, the requirement being that it "Should be paid on the full amount of the principal unpaid at the date of each payment of interest," but no provision was made for the enforcement of the contract.

The act of April 12, 1883, made the terms of purchase less onerous, giving thirty years time and reduced the rate of interest to five per cent, and in section 10, provided that "the failure to pay the interest shall ipso facto work a forfeiture, and the entry on the account shall be evidence of the fact, and there shall be no necessity for judicial ascertainment of the facts of the forfeitures, and no defaulting purchaser or those claiming under him shall evade or avoid the effect of such forfeiture at once by reason of any statute or law which for coverture, infancy or the like, would otherwise give them additional time for payment or action."

It is not at all remarkable that this emphatic and vigorous declaration should have been deemed sufficient, if constitutional, to move the tardy debtor to more prompt diligence, and these provisions were re-enacted on the 9th of February, 1885, with the concession that if the purchaser would pay up by the 1st of August next after his land was forfeited on the 1st of March, the penalty should not at-

tach. But ten days afterwards the Legislature passed the following act:

"That the failure of a holder of public free school, university or asylum land, under contract of purchase from the State, to make the annual payments of principal or interest thereon prior to the 1st of August after the same becomes due, shall not cause a forfeiture of the rights of such holder in such land."

It appears to me singularly unfortunate that the word "principal" or "interest" were used in conjunction, as failure to pay the principal could not work a forfeiture for the term of years embraced in the executed contract of sale under the several acts mentioned, and as the interest is but the increment of the principal, it begets a doubt with some, as to whether it did not repeal the former clauses of forfeiture even were they held not to be repugnant to the constitution. Indeed, I find that in the opinion of many, both the last named laws contravene the spirit of section 4, article VII of the organic law. Should this be the correct view, we are relegated to an act of 1883 and the means therein provided for determining the contract between the State, and the delinquent purchaser. But in any event, it is painfully true that there is now due the school fund from the sales of 1879, 1881 and 1883 a half million of dollars. And if forfeiture cannot be made without a judicial ascertainment, or if upon investigation by the Legislature it is shown conclusively that there is not force and vigor enough in present legal remedies which are sanctioned by organic law, the necessities of the several interests to which these funds belong is enough to move your honorable bodies to deliberate diligence in devising a clear and definite remedy to be as speedily taken as due consideration will allow.

In this connection your attention is further directed to the fact that many citizens purchasing lands under the act of 1883 as modified by the rules of the Land Board, after they have made payments, and complied in good faith with the law as interpreted and administered by this board, find that by a recent decision of our court of last resort, they are without valid titles, and their values swept away. And while this decision from a legal standpoint cannot be criticised or questioned, yet as a matter of public policy, I trust I may be excused for expressing my belief that the compliance by the purchaser in good faith with the conditions of

these regulations should entitle him as a matter of right to hold the land, not only against other claimants, but against the State, or to receive ample protection against loss.

It seems to me to impart to such a transaction the moral force of a contract, and should vest the purchaser with a right of property in the land, only to be forfeited by his neglect or refusal to comply with the conditions prescribed. This puts the State upon the same footing of an ordinary land holder dealing with his lands, and subject to the same rules which prevail between man and man in the daily business transactions of life. The State having complete dominion of this property, prescribes its own terms, and creates its own machinery for its management and disposition, and in equity if not by the strict letter of the law it should be held bound to complete liability when its terms, as set forth by its legally constituted agents, have been accepted and acted upon in good faith.

What should be thought of a proprietor of a private landed interest if, after he had encouraged honest men to accept his proposals and act upon them, he should repudiate the whole thing and sell or attempt to dispossess those who had put faith in his promises? Such a policy, with reference to our public lands, would soon shingle them all over with conflicting claims, and the faith of the citizen in the State's title would be qualified by that misgiving born of the knowledge that he who accepts it does so at his peril.

A great commonwealth in dealing with its citizens should not, by design or otherwise, overreach them, but its seal and signet should compass an assurance of absolute stability and indisputable permanency of title, so far as it was concerned, in all transactions not tainted with fraud.

REFORMATORY.

In pursuance of the act passed by the Twentieth Legislature commissioners were appointed to locate this institution, and \$10,000 was appropriated and expended in purchasing a site. The trustees, subsequently appointed under the provisions of the law, have expended \$62,117 in erecting buildings, fencing, etc., all of which is set forth by detailed statement in their report submitted.

In the purchase of the farm of 696 acres in Coryell county, lying about two miles from Gatesville, we think the requirements of the law have been

fully complied with. The location is central and of convenient access from all parts of the State by the Cotton Belt railway. The site is elevated and healthy, and commands a fine view of distant hills in almost every direction. The buildings were completed and turned over to the State November 10, 1888, and it was contemplated that it would be ready for the occupancy of the youthful convicts to be transferred by proclamation as the law directs, at an early day after the State took charge. But the artesian well, from which a water supply was expected, was a partial failure, as a flow of water was not obtained of sufficient quality and quantity for all purposes, and as this was imperative, a renewed effort was made, which was reasonably successful, furnishing a flow of 250 barrels per day of pure water. The completion of the buildings and their additions, and the preliminary arrangements to be made for the reception of those within the prescribed ages and confined in the penitentiaries, necessitated the appointment of a Superintendent, and accordingly on November 20th, 1888, Mr. Ben. E. McCulloch, who by reason of his executive ability, and well recognized experience and worth, was deemed well fitted for the responsible duty, was placed in charge, and on the first of January the youthful delinquents were transferred by proclamation from the State prisons as the law directs. The act of the Legislature establishing this institution for the most beneficent purpose, and sustained so generously in obedience to the popular sentiment of the State, was silent as to the plan to be adopted, devolving upon the Executive the responsibility of a choice between what is termed the "Congregate System" with its adjunct of prison walls, and the congregae or family system of a more domestic type. This was to me a matter of anxious solicitude, as it was so vital to the future of the institution. I therefore determined to seek all the light that the wisdom and experience of similar institutions could bestow, and every province of knowledge upon this point within my reach was fully explored before entering upon the plan of the buildings. It was found that in many of the States, after they had experimented for years in a sea of blunders, humanity had suggested, and experience justified the change of these institutions at great cost to the respective States, from the prison plan to that of the family system, and

the best and most thoughtful minds among the superintendents, many of whom had been continuously engaged in this kind of work for more than a quarter of a century, concurred in saying, that the experience in their own and other institutions had taught them that boys could be more judiciously and economically trained and educated by this than the plan formerly in vogue throughout the country. The reformatory at Gatesville is a reflex of the plans and suggestions of Geo. F. Howe, superintendent of Meriden (Conn.) Reformatory. He is the father of the family system, and for nearly a half century has been the superintendent of the Ohio and Connecticut institutions of this character. The most material point of objection to the plan seemed to me to exist in the apparent facility for escape. But two of the superintendents of similar institutions declare that "very few have escaped and but little expense has been incurred in the pursuit of fugitives," and they take the broad ground that, admitting some might and probably would escape, it would be highly improper and impolitic to restrict nine out of ten boys in the additional facilities afforded for their reformation and future usefulness, because "the tenth one was incorrigible and refractory and might escape. I have had the assistance of an earnest, active Board of Trustees, and we can only hope in the discharge of this duty to have fulfilled your expectations and those of the people, and that the institution will vindicate its claims upon public confidence, and the generous support of the State. Its success will be measured by its results, and as the youth of the State are the hope of the nation, if by its moral help it shall reclaim those drifting upon the currents of evil, and make them honest, industrious, temperate men, and successful wage-winners, adding to the productive income and taxable values, instead of moral lepers upon society, the State will be abundantly recompensed for its outlay.

As some changes in our laws are necessary to the furtherance of the plan of reformatory work sought to be inaugurated by the establishment of the institution, I would respectfully urge upon your honorable bodies that its proper purpose be not misapprehended, and while moral delinquency should be made the basis of commitments, neither those who cannot be reformed, nor those who need no reformation should be committed.

The State prison is the proper place for the hardened criminal; the insane asylum for those mentally deranged; the public school for the truant, and the shiftless citizen should not be permitted to make it a place of deposit for the child whose support he would gladly escape. Provision should be made vesting the trustees, acting in conjunction with superintendents, with authority whereby transfers can be made from the reformatory to the State prison of all those who may prove incorrigible or persist in the choice of an evil life, with like privilege of transfer from the latter to the former of all coming within the ages when the improvement of the convict demands it. This may be restricted so as not to include those under life sentence, and while the present maximum and minimum ages of admission should be retained, commitments should be during minority, and the Trustees, with the concurrence of the Superintendent, should be clothed with authority to discharge upon satisfactory evidence of reformation, as none ought to be held in the institution after giving reasonable hope that reformation is effected. The present institution should be devoted entirely to the keeping of male delinquents, and additional regulations provided for the punishment of those who may aid or procure the escape of inmates. In addition I recommend such an appropriation as in your judgment will be helpful in putting it at the earliest time practicable upon a self-supporting basis. The judgment of your honorable bodies can best determine such details as may be essential to the success of the Reformatory and the good of the State.

INSTITUTE FOR DEAF AND DUMB AND BLIND COLORED YOUTH.

This institution, in compliance with the act of April 5th, 1887, appropriating therefor \$50,000, was economically established and has been successfully managed, and we can point to no better illustration of the humane solicitude of the State in its relations to its colored citizens than is here afforded. I was strongly inclined to the opinion that its establishment was inexpedient and unnecessary, and that there was a more pressing necessity in compliance with the demands of humanity for liberality in bettering the accommodations of the large body of colored lunatics at the asylums and scattered throughout

the State, but did not interpose my objection to its becoming a law, because I believed that it should be an extreme case which would justify, and make it the duty of the Executive to withhold his approval of any bill passed by the Legislature as the direct representatives of the people, upon the ground of expediency alone. I feel assured, however, that the institution will do no discredit to the wisdom of the Legislature making such ample provision for its organization, and it gives me pleasure to refer to the very efficient and creditable manner in which the Board of Trustees whose services I was so fortunate in securing have discharged their duty with the funds placed at their disposal.

Superintendent Holland has labored faithfully in everything pertaining to its success, and I cheerfully bear witness to his efficiency and zeal. The marked results of his efforts are apparent in the details of the management and the rapid progress made by those so recently committed to his charge. Your attention is directed to his excellent report; and it would be well to remember when considering their wants that the more helpless these people are the more more strongly do they appeal to the sense of justice and beneficence of those who have been more fortunate in the opportunities and advantages of life.

THE ORPHAN ASYLUM.

The past legislative history of our State discloses the fact that an institution of this character was contemplated at a very early day, and an act approved August 30, 1856, donated one hundred thousand acres of land for its maintenance. There was, however, no law enacted on the subject until the act of April 4, 1887, provided for its inauguration, and the location of its site was to be determined by the most desirable inducements offered by such places in the State as were disposed to enter into competition to secure it. After carefully weighing all the offers made by various cities and towns, the commissioners selected for the purpose decided that the bid of the city of Corsicana was the most desirable as well as eligible to meet the requirements of the law. The location offered by the generosity of its citizens cannot be excelled, and furnishes in extent, value and situation everything which can be reasonably desired for such an institution. A board of the very best and

most influential business men of the city consented to act as trustees, and their labors could not have been more earnest or zealous had it been their own business to be managed.

Their report will fully advise you of the manner in which the sum appropriated has been disbursed and the progress of the building, which when ready for occupancy will accommodate about 200 children of the 5,185 which Commissioner Foster's report will show to be in the State. Your wisdom will enable you so to deal with this institution as to make it the most useful to those who are dependent upon the bounty of the State. The deserving orphans should need no advocate to plead their cause in Texas.

THE CAPITOL BUILDING.

When I came into office the walls of the third story, including the dome, were erected. From its very foundation it had been constructed under the supervision of three agents employed by the State, whose duty it was to inspect every part of the material and workmanship, and as they were gentlemen of unquestionable probity and acknowledged ability, and the pre-existing Capitol Board had given the work in its progressive stages such careful attention as their respective duties would permit, a just confidence was felt in the satisfactory character of the building. The attention of the incoming board, however, was soon called by the Superintendent and commissioners to a defect in the original plans and specifications for the dome work, which in their judgment would impose a weight upon the building beyond the point of its safe carrying capacity. As the board made no pretensions to architectural skill or ability, as a precautionary measure, they determined that the best interests of the State could be subserved by calling to their aid competent advisers upon whose judgment and final decision, in conjunction with that of the superintendent and commissioners, the people could more safely rely. Accordingly they secured the services of Messrs. Clayton, Heiner and Harrod, who were men of well established reputations as experienced architects and experts. In addition to the duty of providing for the alleged trouble connected with the dome, they were commissioned and charged to make as complete and thorough inspection of

of the entire building as was possible in its existing state of completion, and by reference to their report it will be observed that after suggesting the necessary remedy for the dome structure, and after a thorough examination of the building, they conclude by saying: "It is our opinion that the building throughout complies with the plans, specifications and contracts, evincing the intelligent and conscientious care of those in charge of the work, and when completed will serve as a worthy capitol of a great State."

In full compliance with every detail suggested the building was then advanced to completion, and in May, 1888, the State government occupied it, and the closing sessions of the Twentieth Legislature were held in their appropriate halls. On the 20th of September, 1888, the Capital Commissioners made their final report, in which they pronounced the building completed according to contract and recommended its acceptance. But as there were well recognized defects in the roof, and some other defects were believed to exist which were considered departures from the contract, and the board believing that the State was entitled to a perfect building in every respect, they declined to receive it until these matters were more satisfactorily adjusted.

It is but due the commissioners and the superintendent to say that they did not believe that a perfect roof could be constructed of copper in this climate on so large an area, because of the great expansion power of the copper, and this opinion was shared by the contractors, as is evidenced by the records. Their report as to the satisfactory completion of the building was based upon what they deemed a perfect compliance with the terms of the contract on the part of the contractors. To obviate the difficulty and bring the matter to an amicable and fair settlement, Colonel Abner Taylor, on the part of the contractors, proposed that the Capital Board should select such competent and disinterested architects as they were willing to entrust with a decision of the matters in controversy, and he would stand pledged to make good any and all defects which might be pointed out in any part of the work. This proposition was so eminently liberal and fair that it could not be declined upon any reasonable grounds appearing to the board. They therefore communicated with the Supervising Architect of the United States with a view of obtaining the services of a suitable

person to make the inspection, and as the Attorney General was called to Washington on other business, he was requested to confer in person with Mr. Freret, the United States Supervising Architect, and lay the whole matter before him. The result was the employment of Mr. E. C. Miller, Mr. Freret's assistant. After a thorough and complete inspection by Mr. Miller, and all his recommendations in every particular had been fully complied with to his entire satisfaction and under his personal supervision, and he pronounced the building perfect and complete, and advised its prompt acceptance, the board was no longer able to urge any valid objection against an acquiescence in the decision. Your strictest scrutiny is urged and the fullest inspection of all the reports and everything connected with the building respectfully suggested.

THE UNIVERSITY.

I presume every friend of popular education desires to see this institution fostered and encouraged until its success is fully realized, and it becomes the pride of the State, to which every poor boy, as well as the rich, can look for a finished education at home, with Texas ideas, associations and ways, and it is certainly desirable that the education here afforded should not be inferior to that which may be obtained abroad. While we feel a laudable ambition in the possession of a University of the highest grade, as was clearly contemplated by its founders, and the requirements of the organic law, yet in view of the fact that it is dependent in its operations upon such revenues as may be derived from its permanent funds, and looking at the matter from a purely business standpoint, it is my deliberate judgment that it is not only violative of sound business principles, but extremely hazardous to its permanent growth and standing, to continually enlarge its scope beyond its available revenue upon hopes and expectations so apt to prove delusive and unsatisfactory. Its present insufficient revenue affords the Board of Regents, who are laboring so patriotically and unselfishly in its interests, much good reason to impeach the wisdom of the scheme for the establishment of the medical branch, at Galveston, to be run on a starvation plan, while putting the University upon still shorter rations. This mode of applying its revenues certainly discredits good business judgment, and seems to be the

profusion of the prodigal rather than the judicious generosity or justice which confers real and lasting benefits.

It is a matter of deep regret that its munificent landed endowment has been so poorly utilized and developed. The report of the honorable Commissioner of the Land Office sets forth clearly and definitely an exposition of the situation of these lands, showing the causes militating against their lease or utilization when brought into competition with the common school lands, so much more desirably and advantageously located, and both he and the Regents present for your consideration some practical remedies, which in their judgment are necessary to a more certain and satisfactory development of the University's resources. As the Board of Regents is composed entirely of the gentlemen fully engrossed with the cares of their private business to such an extent that they could not be expected to devote their personal attention to the management and proper supervision of a large public landed interest, and would necessarily have to establish a kind of branch land office, to be run by such agents as could be obtained for the work. The proposition to turn over the lands belonging to this special interest has much connected with it which does not commend the suggestion to my judgment; and at the same time the history and experience of similar interests in other States seem to show that it has proven wise and judicious in the States mentioned. The Legislature is the trustee charged with the duty of making all needful regulations for the disposition of these funds and the proper disposition and control of its lands, and to your superior judgment and discretion I will most cheerfully defer.

LIBEL LAW.

There seems to be a very general demand from the press for the enactment of more liberal provisions on this subject. This is not alone a matter of private interest, but one of great public concern; and while strict regulations are necessary to guard the citizen from an unwarranted license or abuse, this great business interest, so indispensable in this age of enlightened progress, and which has done so much to lay the foundation of that thrift which marks us as a people, is likewise entitled to complete protection from imposition; and, as I have not studied the subject sufficiently to reach a different conclusion, I can but repeat the sug-

gestions as set forth in a previous statement of my views, as the possible basis for such a law as may give more general satisfaction than our present statute. I am constrained to think that the Michigan statute on the subject of libel would be more just to the press and sufficiently protective to the citizen. This statute provides that in actions for libel the plaintiff shall recover only actual damages, if it is made to appear that the publication was in good faith and does not involve a criminal charge, and was corrected by the defendant as soon as apprised of its falsity. Actual damages is defined in the law to be such damages as the plaintiff may show he has suffered in his property, business, trade, or other damages, no recovery in any case to exceed \$5,000 and actual damages. In addition to these statutory regulations the plaintiff should be confined to one action, no matter in how many places the paper is circulated; but it does not appear to me to be proper to restrict the venue to the county in which the paper is published.

IRRIGATION.

This is one of the most important questions affecting the interest of a large but partially developed section of our State, and in no small degree regulates the value of much of our common school lands; and, as you will be called upon for legislative action on the subject, and doubtless many theories and schemes will be submitted to your judgment, I would respectfully remind you that the basis of wisdom is experience. In ordinary affairs, when we are called upon to explore an unknown region, we seek information from all who may have traveled the pathway. Theories built upon seeming truths may err, but the teachings of actual events are infallible; and, in order that you may possibly profit by what has been taught others deeply concerned by this best of all schoolmasters, I call your attention to the following from the recent message of the Governor of Arizona:

"Our laws should clearly define the manner of appropriating, regulating and distributing the water supply. The claim of a great agricultural and horticultural country which Arizona advances is fast being conceded; with liberal legislation calculated to strengthen these paramount industries the future prosperity of the Territory is assured. There should, therefore, be no uncertainty respecting water rights and privileges. California has

just passed through an exciting discussion of this question. The attempt to enforce the doctrine of riparian rights and to incorporate it into the jurisprudence of that State, created a popular revolt. Old settled communities that had been built up under the irrigation system were threatened with destruction by the enforcement of the riparian system, and a cry from all the arid region of the State has gone up to the Legislature for the distribution of the water so as to build up and enrich communities in place of individuals.

"Now that our parched plains are fast being brought under control of the husbandman through irrigation, it is necessary that the natural water supply should be regulated by well defined laws governing its appropriation and economic control. The future prosperity of this Territory greatly depends upon the wise solution of this vital question. Upon the speedy adoption of a definite policy regulating it, rests the permanency of our agricultural and horticultural interests. While organized capital is allowed to construct canals and take from the natural streams, lakes and ponds a supply of water, it should not be permitted to monopolize its use for speculative or commercial ends. Water, like air, is one of Nature's offerings to the people, and no individual or corporation should be suffered to arbitrarily control it to the detriment of public or private interests.

"Capital should be protected in all its vested rights. Capitalists should be encouraged to build canals and irrigating ditches by the assurance that they will receive fair returns upon their investments; but they should not be permitted to impose extortionate charges upon dependent land-owners.

"The Territory should never surrender the control of its water supply; it is the people's heritage and should be controlled in their interest. The Legislature, by fixing reasonable charges for its use, can protect capital in its investments, by preventing exorbitant charges, can secure to the irrigator all his rights by preventing waste in distribution, can extend the area of land subject to reclamation by passing laws regulating the question, and bearing justly upon all diverse interests, giving protection alike to the capitalist who constructs the water-way and the land-owner who takes the water therefrom, so that each will feel secure in his investment

of money or labor; it can prevent a vast amount of litigation in the future.

"No question of more gravity will demand attention at your hands; it should receive that careful consideration its paramount importance requires."

MINING.

This important subject should by no means escape your careful consideration. The report of the State Geologist, now before you, is replete with information showing that Texas, while rich in soil and climate, is perhaps richer in her undeveloped mineral wealth than many other States making more pretensions in this direction. To practically develop this enormous wealth so long hidden, and set it to work in the service of the people, good laws should at once be passed.

The able and interesting report of the Geologist furnishes a fund of information rich in practical value, and, in connection with the report of Commissioner Foster, will disclose the valuable returns, both present and prospective, resulting from the appropriation made by the Twentieth Legislature at its special session. People of ample means from abroad are turning their attention to Texas with the view of permanent investments, and their frequent inquiries for the character of information here provided could not hitherto receive a satisfactory response.

QUARANTINE.

The power vested in an officer necessary to make laws of this character effective, by which he disturbs commerce in its legitimate operations and restricts travel and the exchange of business transactions, trenches so closely upon the exercise of arbitrary functions that our people quite naturally rendered it an unwilling obedience; yet, if the frequent and periodical appearance of yellow fever in our State prior to the enactment of quarantine laws be accepted as true, according to our State health officer, we should hesitate to dispense with this safeguard to the public health, and its importance is emphasized when we contemplate the effects of the recent terrible epidemic which spread its freightage of disaster and ruin throughout Florida. When her whole people were bowed and trembling under the terrible scourge, with her industries paralyzed and commerce wholly suppressed, while want, pestilence and

death were joining in their unsparing work, the zealous and fearless efforts of Dr. Rutherford to save our people from the imminent peril of such a scourge should justly entitle him to the thanks of all. His report is submitted and you will find a full account of his stewardship.

PENAL AND CHARITABLE INSTITUTIONS.

The imposed necessity to economize time and space, in order to crowd into this message the many subjects deemed worthy of your consideration, leaves but little room for more than the statement that the reports of those in charge will clearly show, we think, that in the disbursements of the public money they have been governed by the strictest rules of economy consistent with the best interests of their institutions.

And one in any considerable degree familiar with the details of their labors, must be impressed with their zeal and devotion to the trusts committed to them. In the discharge of their official duties, seconded by the hearty co-operation of their respective boards, they have endeavored to do the very best for the State, and the welfare of the unfortunate ones entrusted to their care. They submit to you many important suggestions in their respective reports, which are entitled to earnest consideration, and we trust that there may be a careful examination of the wants of these institutions, and such necessary appropriations made as will be conducive to the best interests of the inmates.

In this connection it becomes my duty to inform you that the Penitentiary Board, with the full concurrence of all parties interested, and upon the earnest recommendation of the superintendent, believing that every consideration of economy and public interest suggested a change in the present law for conveying prisoners from the different counties to the penitentiary, and in order that the State should hereafter exercise this duty by the employment of proper agents under the control and direction of the superintendent and financial agent, it was determined to extend the existing contract 90 days to give your honorable bodies sufficient time to fully investigate and weigh this important matter before the State should enter into another contract. It is believed that the prisoners can be as cheaply and much more satisfactorily conveyed to the prisons by the State than by

private contracting parties. The contractors are simply required to carry their prisoners to the nearest prison, and as they find it more to their interest to convey them to Rusk Penitentiary, a large majority are carried there and have to be immediately transported by the State to the places where they are needed under the different labor contracts, entailing the cost of several thousand dollars each year in addition to that apparent in the contract for first deliverance. The exact amount you may obtain from the report of the Financial Agent, and while it would be difficult for any fair man to find just grounds of complaint with the contractors for this work, either in their honest purpose to comply fully with the obligations entered into with the State, or on the score of willful neglect of duty, yet prisoners are necessarily suffered to remain for days in the different county jails after their conviction and sentence and notice given, creating an unnecessary burden and expense on the different counties for feeding them, and a loss to the State by inability to place them promptly to work under the existing labor contracts. This important matter is more fully brought to your attention by Superintendent Goree, and your favorable consideration is requested.

RAILWAYS.

It would not be easy to fix any truth better established or more fully admitted in our State than that you have the power conferred upon you to regulate these corporations; but the power to regulate does not include the power to annihilate or destroy them. To extend the same degree of freedom and protection to all forms of industry is but a logical deduction from the genius of our institutions, and in order that the burden of taxation may fall equally upon all, taxes are required to be uniform and are levied equitably upon all taxable values, and the amount is fixed and certain beyond which State, county and municipal levies cannot extend; and there can be urged no good reason why a corporation should be permitted to exercise powers denied the State Government, and as their tariff rate is simply a tax upon those who use the roads, special rates, rebates, drawbacks, or favors to individuals or localities, or discrimination in favor of the larger shipper operates as a bounty, and imposes an increased and unequal tax upon all others. The railways revolt against

legislation that attempts to say that they shall not receive more than a fixed percentage as a recompense upon the actual value of their property with the fictitious capital eliminated from their accounts, claiming that they have the right to use it in the manner most to their own advantage, and by concert of action, such as pooling, division of territory and business, they can maintain excessive rates out of proportion to the relative cost of service. It is difficult to see why they should complain at the principle or practical consequence resulting from an attempt on the part of the State to gauge their profits with the view of giving them liberal returns for their capital and enterprise, when they exercise the privilege of gauging by their rates the margin of the farmer's, merchant's, or stock raiser's profits at their pleasure and with the utmost precision and certainty, and creating by an inequality of rates a practical prohibition of the effectual enjoyment of a free exchange of the products and fruits of labor to the best advantage, in order that they may give a monopoly to certain forms of industry or favored persons and sections. There is a golden rule by which they should be governed in matters of this kind. If there be any right in this country you should protect, it is the right of labor. It has an incontestible claim to the fair value of its products, which depends largely upon cheap transportation and the greatest facility and freedom of exchange. These corporations have received a princely dowry in lands and moneyed subsidies from our people, and should give reasonable rates and fair treatment in return. The people are in favor of them having and enjoying all the rights they are justly entitled to, and no more. If they become participants in wrong to the country or individuals and attempt to cripple any of the productive energies of the State, they should be held amenable to the law; and, as the State is the arbiter to mediate by equal laws between inharmonious and conflicting interests, it is hoped that by an equitable adjustment this standing issue between the railroads and the people may be brought to a fair, honest and final settlement.

EDUCATION.

In a former message my views were given at length, and I could not now hope to shed new light upon a question which has been elaborately discussed, and all its bearings so fully set

forth by the able and comprehensive report of the honorable superintendent. I deem it unnecessary to do more than urge your earnest attention thereto, trusting that it will secure the adoption of such legislation as may be necessary to improve the financial methods of the system.

THE AGRICULTURAL AND MECHANICAL COLLEGE, AND HUNTSVILLE AND PRAIRIE VIEW NORMAL SCHOOLS.

I have not had access to the reports of these institutions, but I am led to believe from such information possessed that they are accomplishing all that could be expected of them, and that they have developed into that measure of usefulness expected and demanded.

MILITIA AND RANGER FORCES.

I have found the use of this force at my command—a most important and indispensable agency for the better execution of the laws. They have proven most excellent conservators of the peace, and of incalculable value in preserving human life and property. Whenever there has been a demonstration, having the semblance of organized resistance to the law, and an application was made by the local authority, setting forth the necessity of their use in support of the civil power, these gallant men have with cheerful alacrity responded to every call made upon them, and by this exhibition of firm purpose to suppress all unlawful practices, tranquillity has been maintained without the effusion of blood or loss of life.

A careful consideration of the report of Adjutant-General King will furnish a better idea of the valuable service rendered by them, and the extent to which they are so justly entitled to your highest commendation and favorable consideration. And I here take occasion to remark, that in the late serious and threatening disturbance on the Rio Grande, having no troops accessible, I called upon the sheriffs of Cameron, Zapata and Hidalgo counties to go to the scene of the trouble with posses in aid of the sheriff of Starr county, to restore order and protect the citizens from domestic violence, and the prompt manner in which they met this extraordinary exigency can not be too highly praised. With such men in official stations of this character, there need be no apprehension concerning the safety of life and property, or fear that the majesty of

the law will not be fully vindicated, without regard to personal consequences to themselves.

Of the special appropriations amounting to \$30,000 for the two years, placed at my disposal to defray any expense which might become requisite in the execution of the laws, to preserve public order, I have expended \$11,961.81, leaving an unexpended balance of \$18,038.19 in the treasury.

FURNISHING OF NEW CAPITOL.

It was a matter of much regret on my part that the provisions of law for furnishing our Capitol did not pass with the requisite two-thirds majority to put it into operation at once. Being extremely desirous of having the new furniture in place, in order that your assembly might have the benefit of the additional comfort and convenience afforded, I lost no time in appointing the board and inaugurating their labors when vested with the necessary authority so to do, and their report, to which your attention is called, will show you that they have not been wanting in that reasonable diligence which was expected in the discharge of a trust of such magnitude. They have felt that the interest of the State was to be fully guarded in this matter, and time was an important factor demanded by the contractors to enable them to meet the requirements imposed by the careful and strictly guarded contract, which covers every detail necessary to secure furniture of the character and quality anticipated by the terms of the law.

GREER COUNTY.

The question of disputed boundary in regard to this territory is still waiting such action as Congress may see fit to take to bring this important matter to a final adjustment; and as the State will be required to ratify the proceedings of Congress to make the plan of settlement which may be decided upon operative, it is hoped and expected that our members of Congress will expedite the matter so that your honorable bodies may give it your speedy attention. It is a rich and fertile section, and is being filled up with a thrifty, law loving people. But their prosperity and development is greatly retarded by the uncertainty surrounding their homes, and the State, while exercising a nominal jurisdiction, is precluded from the full enjoyment of that proprietorship extended over other portions of her ter-

ritory. This is a very unsatisfactory condition of affairs, and is imposing on all concerned a train of evils, the magnitude of which it is difficult to conceive or overestimate.

PUBLIC ROADS.

The general obligation and necessity for better highways is fully acknowledged, and the question of means and expediency alone are left for consideration. Should you deem it advisable to engraft the local option feature upon the law under which counties may issue bonds for road purposes, I respectfully urge upon you the great importance of restricting the power to well defined limits in order that the people may not be burdened with a heavy public debt beyond their capacity to pay, constituting a mortgage upon their property for years to come. Nothing, in my humble judgment, short of dire necessity, can justify a people in entering into that worst of all slavery—debt—which, in most instances, is like a consuming fever and wasting consumption, and the temporary prosperity it brings is generally but the herald of death, and points to the tomb of their highest and best interests. To repeal the present road law entirely, and attempt to keep and provide for public roads by taxation alone, would be as unjust as the law now is in many of its features, and would practically confiscate the property of some sections, where it is mainly in the hands of a minority of the people, and it would exempt a large class who contribute in no other way to the necessities of the State, not even paying a poll tax. The property owners are largely burdened with the education of their children, and should not be required to furnish them good highways free of cost or exertion on their part. There is a mutuality of obligation which should not be ignored in considering this question. We learn from history that Napoleon, when Emperor, utilized the labor of the occupants of prisons upon the public roads which he planned and constructed, and in addition to this force gave employment to such paupers and poor generally as were able and desired to work. As the result of this policy the best system of roads ever built in any country was constructed in France, and the people for the time were prosperous and idleness was unknown. This would seem to suggest the wisdom of at least a better use of some of these agencies by the county authorities. With the

firm belief that you fully realize the momentous issues entrusted to your decision for the prosperity, happiness and welfare of the great body of the people, this message is respectfully submitted.

L. S. ROSS,
Governor.

Senator Townsend offered the following resolution:

Resolved, That five thousand copies of the Governor's message be printed in the English, two thousand in the German and two thousand in the Bohemian language for distribution.

Senator Burney offered the following amendment:

Amend by adding, "and two thousand in the Spanish language."

Adopted.

Senator Maetze moved to amend by "making three thousand in the German language."

Accepted.

Senator Davis offered the following substitute:

Resolved, That five thousand copies of the message of the Governor be printed in the English language.

On motion of Senator Upshaw,

The substitute was laid on the table.

Senator Townsend moved to amend so as to read:

"That copies shall be printed in the Spanish language, provided that reasonable facilities can be had for doing so."

Senator Townsend withdrew his amendment and

The resolution was adopted.

On motion of Senator Douglass,

The Senate adjourned till 10 o'clock to-morrow morning.

FOURTH DAY.

SENATE CHAMBER,
AUSTIN, January 11, 1889.

Senate met pursuant to adjournment.

Lieutenant-Governor Wheeler in the chair.

Roll called.

Quorum present.

Prayer by the chaplain, Dr. Smoot.

On motion of Senator Claiborne,

The further reading of the Journal was dispensed with.

The following communication was received from the Secretary of State: